

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER MILTON WAYNE
BOSARGE,

Plaintiff,

v.

CLYDE BROWN,

Defendants.

Case No. 3:21-cv-05210-BHS-TLF

ORDER TRANSFERRING CASE

The District Court has referred this action, filed under 42 U.S.C. § 1983 to United States Magistrate Judge Theresa L. Fricke. Plaintiff Christopher Milton Wayne Bosarge, proceeding *pro se*, initiated this lawsuit on March 22, 2021. See Dkt. 1. The Court has reviewed Plaintiff's Proposed Complaint and finds the proper venue for this case is the Eastern District of Washington. Therefore, the Court orders this case be transferred to the Eastern District of Washington.

I. Background

In the Proposed Complaint, Plaintiff, who is currently housed at Olympic Correctional Center in Forks, Washington, alleges his Eighth and Fourteenth Amendment rights were violated while he was housed at the Washington State Penitentiary ("WSP") in Walla Walla, Washington. See Dkt. 1-1.

1 The Court has not granted Plaintiff *in forma pauperis* (“IFP”) status, nor has the
2 Court ordered the Clerk’s Office to attempt service of process. No defendant has
3 appeared in this action.

4 II. Discussion

5 Venue may be raised by the court *sua sponte* where the defendant has not filed
6 a responsive pleading and the time for doing so has not run. See *Costlow v. Weeks*,
7 790 F.2d 1486, 1488 (9th Cir. 1986). When jurisdiction is not based solely on diversity,
8 venue is proper in (1) the district in which any defendant resides, if all of the defendants
9 reside in the same state; (2) the district in which a substantial part of the events or
10 omissions giving rise to the claim occurred, or a substantial part of the property that is
11 the subject of the action is situated; or (3) a judicial district in which any defendant may
12 be found, if there is no district in which the action may otherwise be brought. See 28
13 U.S.C. § 1391(b). When venue is improper, the district court has the discretion to either
14 dismiss the case or transfer it “in the interest of justice.” See 28 U.S.C. § 1406(a).

15 Here, Plaintiff’s Proposed Complaint contains claims that arise from allegations
16 of acts and omissions that occurred at WSP. Dkt. 1-1. WSP is located in Walla Walla
17 County, Washington, which is in the Eastern District of Washington. See 28 U.S.C. §
18 128(a). Further, it appears the only properly named Defendant, Clyde Brown, resides in
19 the Eastern District of Washington. See Dkt. 1-1.¹ Therefore, the Court concludes venue

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22 ¹ The Proposed Complaint also names “Department of Corrections State of Washington ‘Headquarters’”
23 as a defendant, but a subdivision of a state is not a “person” for purpose of Section 1983 and therefore
24 cannot be sued in such an action. See *Howlett v. Rose*, 496 U.S. 356, 365 (1990); also *Alabama v. Pugh*,
25 438 U.S. 781, 782 (1978) (per curiam) (concluding that the suit against the state Board of Corrections
was barred by the Eleventh Amendment)

1 should be in the Eastern District of Washington, and venue in the Western District of
2 Washington would be improper.

3 Because venue is improper, the Court has the discretion to dismiss or transfer
4 the case. See 28 U.S.C. § 1406(a). Plaintiff is a *pro se* prisoner. See Dkt. 1-1.
5 Dismissing the case and directing Plaintiff to refile in the Eastern District of Washington
6 would cause unnecessary delay. Therefore, the Court finds transferring, rather than
7 dismissing, this case is appropriate.

8 III. Conclusion

9 The Court finds venue is improper and the interests of justice require this case be
10 transferred to the proper venue. Accordingly, the Court orders this case be transferred
11 to the Eastern District of Washington in Richland and the case be closed.²

12 In light of the transfer, the Court defers to the Eastern District of Washington with
13 respect to Plaintiff's Application to Proceed IFP (Dkt. 1).

14 Dated this 26th day of March, 2021.

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17 Theresa L. Fricke
18 United States Magistrate Judge
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23 ² An order transferring venue pursuant to 28 U.S.C. §1404(a) does not address the merits of the case;
24 therefore, it is a non-dispositive matter that is within the province of a magistrate judge's authority under
25 28 U.S.C. § 636(b)(1)(A). See *Pavao v. Unifund CCR Partners*, 934 F.Supp.2d 1238, 1241 n. 1 (2013).